

THE STATE OF TEXAS

COUNTY OF HARRIS

BID #L23407

ORDINANCE # 2010 - 0224

CONTRACT #4600010264

I. PARTIES

ADDRESS

THIS AGREEMENT for **PREVENTIVE MAINTENANCE & REPAIR SERVICES ON VARIAN ANALYTICAL INSTRUMENTS** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **VARIAN, INC.** ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for Director
For Various Departments
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Varian, Inc.
2700 Mitchell Drive
Walnut Creek, California 94598
Phone: 925-945-2271
Fax: 800-394-6482

The Parties agree as follows:

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2.1 This Agreement consists of the following sections:

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- A. DEFINITIONS
- B. SCOPE OF SERVICES
- BB. EQUIPMENT LOCATION LIST
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. DRUG POLICY COMPLIANCE AGREEMENT
- E. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- F. DRUG POLICY COMPLIANCE DECLARATION
- G. FEES AND COSTS
- H CITY'S CONTRACTORS PAY OR PLAY PROGRAM

PARTS INCORPORATED

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS

4.1 If a conflict among the sections or exhibits arises, the Exhibits control over the Sections.

5.0 DEFINITIONS

5.1 Certain terms used in this Agreement are defined in Exhibit "A".

6.0 SIGNATURES

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL: (if a corporation)
WITNESS: (if not corporation)

By: _____

Name: Cynthia Johnston

Title: ASST. SECRETARY

By: _____

Name: Martin O'Donoghue

Title: SR. Vice President

Federal Tax ID Number: 77-0501995

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS

Signed by: _____

Mayor _____

APPROVED:

City Purchasing Agent

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

3/31/10

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

February 26, 2010

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit "B" & "BB".

2.0 RELEASE

- 2.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.0 INDEMNIFICATION

- 3.1 PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:
 - 3.1.1 PRIME CONTRACTOR/SUPPLIER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-3.2, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
 - 3.1.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
 - 3.1.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.
 - 3.1.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.
- 3.2 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

4.0 INDEMNIFICATION PROCEDURES

- 4.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
 - 4.1.1 a description of the indemnification event in reasonable detail, and
 - 4.1.2 the basis on which indemnification may be due and
 - 4.1.3 the anticipated amount of the indemnified loss.
- 4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.
- 4.3 Defense of Claims
 - 4.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.
 - 4.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE

- 5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:
 - 5.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate
 - 5.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

5.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy
Aggregate Limits are per 12-month policy period unless otherwise indicated

5.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

5.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City. Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

6.0 WARRANTIES

6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

6.2 With respect to any parts and goods furnished by it, Contractor warrants:

6.2.1 that all items are free of defects in title, material, and workmanship,

6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS

7.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

9.0 MWBE COMPLIANCE

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 9.2 RESERVED

10.0 DRUG ABUSE DETECTION AND DETERRENCE

- 10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D", together with a written designation of all safety impact positions, and
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E".
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

12.0 CITY'S CONTRACTOR PAY OR PLAY PROGRAM

- 12.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.
- 12.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

13.0 CONTRACTOR'S PERFORMANCE

- 13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS

- 1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "G" for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

2.0 TAXES

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$39,003.28** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

"By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation."

- 5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
- 6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- 6.3.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM

- 1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the starting date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED

- 2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RESERVED

4.0 TIME EXTENSIONS

- 4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR

- 1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

FORCE MAJEURE

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
- 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and
 - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES

- 7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS

- 9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT

- 10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES

- 11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL

- 12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST

- 13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS

- 14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS

- 15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406(c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
- 15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE

- 16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT

- 17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefore.

EXHIBIT A DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Equipment" means all Varian analytical instruments and Varian Workstation Data Systems.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"Replacement Parts" mean all items (hardware or software) that Contractor provides and installs in Equipment in order to restore the Equipment to a fully operational condition.

EXHIBIT "B"
SCOPE OF SERVICES

1.0 Scope of Work:

- 1.1 The Contractor shall provide all tools, parts, equipment, supervision, and transportations necessary to provide mechanical repair and maintenance services for specific Varian analytical instruments and the Varian star workstation data systems owned and used by the City of Houston. The Varian analytical instruments and Varian Star Workstation Data Systems for which the Contractor shall provide maintenance and repair services are those items owned and operated by the City's of Public Works and Engineering and the Health and Human Services Departments and listed in Exhibit "BB".
- 1.2 The Contractor's performance of maintenance and repair services is anticipated to primarily consist of the Contractor's repair and maintenance of equipment as a result of normal wear and tear. The Contractor shall be responsible for maintaining and repairing the equipment so that the equipment is in a fully operational condition.

2.0 Time of Performance of Maintenance and Repair Services:

- 2.1 The Contractor shall perform maintenance and repair services Monday through Friday between the hours of 8:00 a.m. - 5:00 p.m., except for recognized City Holidays as set out by motion of the City Council (the "Normal Business Hours"). The Contractor shall not be required to perform maintenance and repair services outside of the normal business hours.

3.0 Requests for Maintenance and Repair Services:

- 3.1 The maintenance and repair services to be performed by the Contractor under this Agreement shall include Contractor's resources and personnel necessary in order for the Contractor to accept and respond to all of the Departments Contract Administrator's requests to perform maintenance and repair services in accordance with this Agreement. There shall be no limit on the number of requests for Contractor's performance of maintenance and repair services that the Department Contract Administrator may issue to the Contractor during normal business hours.

4.0 Labor, Tools, Facilities, Transportation, and Travel for Maintenance and Repair Services:

- 4.1 The maintenance and repair services to be performed by the Contractor shall include Contractor's labor, tools, facilities, transportation, and travel necessary for the Contractor to perform the maintenance and repair services, at no additional cost to the City.

5.0 Telephone Support:

- 5.1 The maintenance and repair services to be performed by the Contractor under this Agreement shall include the Contractor's telephone support for the equipment during normal business hours, under which the Contractor shall answer the Department's Contract Administrator's questions concerning the operation and maintenance of the instrument. There shall be no limit on the number of requests for Contractor's performance of telephone support that the Department's Contract Administrators may issue to the Contractor during normal business hours.

6.0 Items Excluded from Maintenance and Repair Services.

- 6.1 The maintenance and repair services to be performed by the Contractor under this agreement do not include for equipment problems caused by:
 - 6.1.1 Contamination of the equipment by the City.
 - 6.1.2 The City's electrical supply, gas supply, or cooling water supply to the equipment that is not in accordance with the requirements set forth in the operating manuals for such equipment that the manufacturer has provided to the City.
 - 6.1.3 The City's usage of the equipment in a lab or room environment that is improper as defined by the operating manuals for such Equipment that the manufacturer has provided to the City.
 - 6.1.4 The City's misuse or improper operation of the Equipment in a manner that is contrary to the operating manuals for such Equipment that the manufacturer has provided to the City.
 - 6.1.5 The City's neglect of the Equipment.

7.0 Replacement Items:

7.1 Installation of Replacement Items/Parts:

- 7.1.1 The maintenance and repair services set forth in this Agreement include installation of all replacement items/parts necessary to restore the instrument to a fully operational condition. The Contractor's obligation to install replacement items/parts shall include the installation of all non-included replacement items/parts, as defined below:

7.1.1.2 Replacement Items/Parts Included in Maintenance and Repair Services

The maintenance and repair services set forth in this Agreement shall include the contractor's replacement of items/parts at no cost to the City, with the exception of the items/parts outlined in 7.1.2 below entitled "Obtaining Non-Included Replacement Item/Parts".

- 7.1.1.2.1 The following replacement items/parts shall be provided for gas chromatographs are as follows:

- 7.1.2.1.2 Gas chromatograph consumables, filters, injection and gas switching valves, pulse ionization detector lamps, electron capture detector reaction tubes, solvents and cells, flame photonization detector photo multiplier tubes, thermal conductivity detector filaments and thermionic specific detector beads.

- 7.1.1.1.3 The following replacement items/parts provided for atomic absorption spectrophotometers:

- 7.1.1.1.2 Atomic absorption consumables, source lamps, nebulizers, burners, and spray chambers.

- 7.1.1.1.3 Software update for Atomic Absorption Spectrophotometers: Spectra atomic Absorption Spectra AA, Version 5.1

7.1.2 Obtaining Non-Included Replacement Items/parts.

- 7.1.2.1 In the event that, in the course of its performance of the maintenance and repair services set forth in this Agreement, the Contractor determines that an equipment item being maintained or repaired requires a non-included replacement Item/Part to restore it to fully operational condition. The Contractor shall notify the Department's Contract Administrator in a written "Non-Included Replacement Item Notice" of the specific non-included replacement Item/Part required (including all identifying information necessary to precisely identify the Replacement Item - i.e., all serial/part numbers) as well as the price the Contractor intends to charge to provide such a non-included replacement item to the City as listed in "Fee Schedule H."
- 7.1.2.1.2 Following the Department's Contract Administrator's receipt of a Non-Included Replacement Item/Part Notice from the Contractor, the Department's Contract Administrator's has the option of:
- 7.1.2.1.2.1 Purchasing the Non-Included Replacement Item/Part from the Contractor under this Agreement at the price identified by the Contractor in the Non-Included Replacement Item/Part Notice
 - 7.1.2.2.2 Independently obtaining the identified Non-Included Replacement Item/Part from another source and providing that Non-Included Replacement Item/Part to the Contractor for its use in completing the maintenance and repair services.
 - 7.1.2.2.3 The Department Contract Administrator shall notify the Contractor in writing in the event that he/she elects to purchase such Non-Included Replacement Item from the Contractor under this Agreement at the price identified in the Non-Included Replacement Item Notice (a "Non-Included Replacement Item/Part Order"). The Non-Included Replacement Item/Part Order shall set forth the price for that Non-Included Replacement Item/Part, as taken from the Non-Included Replacement Notice.
 - 7.1.2.2.4 During all periods in which the Contractor is awaiting the Department's Contract Administrator's response to its Non-Included Replacement Item/Part Notice, Contractor shall be responsible for:
 - 7.1.2.2.5 Performing all maintenance and repair services on the instrument that requires the Non-Included Replacement Item/Part so as to restore that item to full or partial operational condition.
 - 7.1.2.2.6 Notifying the Department Contract Administrator of any partial functionality that the equipment Item/Part is able to perform resulting from the Contractor's performance of such maintenance and repair services, absent the availability and installation of the Non-Included Replacement Item/Part.

- 7.1.2.2.7 Performing all actions necessary to protect the instrument so that the partially-operational or non-operational status of the item due to the absence of the Non-Included Replacement Item/Part will not affect the ability of the item to be restored to a fully operational condition once the Non-Included Replacement Item/Part is obtained.

8.0 Stock of Replacement Items/Parts: At all times the term of this Agreement, the Contractor shall maintain a stock of replacement Items to ensure that such replacement Items/Parts are available for installation by the Contractor within 24 hours of the time that the need for such replacement Items are identified. The Contractor shall ensure that non-included replacement Items/Parts are available within 24 hours from the time Contractor receives a non-included replacement Item order from the Department Contract Administrator. For all other replacement Items/Parts, the Contractor shall ensure that such Items are available within 24 hours from the time that the Department Contract Administrator makes a request for the Contractor's performance of maintenance and repair services under this agreement.

8.1 Types of Replacement Parts: At the Contractor's discretion, replacement parts provided under this Agreement may be either new parts provided by the original equipment manufacturer (OEM) or reconditioned/repared parts.

9.0 Maintenance and Repair Services Response and Completion Times:

9.1 Maintenance and Repair Services Response Time.

Within seventy-two (72) hours after receiving the Contract Administrator's request for maintenance and repair services for an instrument under this Agreement, the Contractor shall dispatch its technicians to the City site where the Equipment is located, and the Contractor's technicians shall start performing the maintenance and repair services requested by the Contract Administrator.

9.2 Maintenance and Repair Services Completion Time. The Contractor shall restore the Equipment/instrument to fully operational condition within seventy-two (72) hours after receiving the Contract Administrator's request for maintenance and repair services for that Equipment/instrument. In the event that the Contractor, due to external impacts and through no fault of its own, cannot complete maintenance and repair services within 72 hour period, then the Contractor shall have a reasonable time to complete such maintenance and repair services once such external impacts no longer prevent the Contractor's completion of the services. However, such a reasonable time shall not exceed 72 hours following the time that such external impacts are no longer an impediment to the Contractor's completion of the requested maintenance and repair services.

10.0 Preventative Scheduled Maintenance

- 10.1 The Maintenance and Repair Services to be performed by the Contractor under this Agreement shall include annual preventative maintenance inspections of the Equipment, as set forth below;
- 10.2 Once a year during the term of this Agreement, the Contractor shall perform a preventative maintenance inspection (PMI) of all Equipment items set forth in this Agreement. During the PMI, the Contractor shall inspect the instrument, provide all maintenance needed/required, and test the instrument to ensure that it is in a fully operational condition in accordance with the requirements of this Agreement.
- 10.3 Each PMI visit to an Equipment item shall include, but is not be limited to, the Contractor performing the following:

- 10.3.1 Inspection of the Equipment/instrument's complete system.
- 10.3.2 Replacement of faulty or marginal components in the Equipment/instrument
- 10.3.3 Cleaning and lubrication of the Equipment/instrument.
- 10.3.4 Adjustment and testing for proper operation of the Equipment/instrument

- 10.4 Each PMI visit performed by the Contractor shall be scheduled by the Contractor in consultation with the Contract Administrator at a time during Normal Business Hours when it will be convenient for the Contract Administrator to attend such PMI visit. If approved in advance by the Contract Administrator, the Contractor may combine a PMI visit to an Equipment/instrument and Contractor's response to a request for maintenance and repair services for that same Equipment/instrument into a single visit.
- 10.5 As a part of each PMI visit performed by the Contractor, the Contractor shall prepare a written report detailing all work performed on the Equipment/instrument that is the subject of that PMI visit (the "PMI Report".) The PMI Report shall contain all information and be in the format required by the Department's Contract Administrator. Upon Completion of each PMI visit, the Contractor shall provide the Department's Contract Administrator a copy of the completed PMI report resulting from that visit.
- 10.6 The Contractor shall perform each PMI using, at a minimum, the Preventative Maintenance Procedure/Check Lists set forth in Exhibit "BBB". The Contractor shall include a completed copy of the Preventative Maintenance Procedure Check List in the PMI Report resulting from the Contractor's performance of a PMI visit.

11.0 Maintenance and Repair Services for Software.

- 11.1 The maintenance and repair services set forth in this Agreement shall include maintenance, repair, and upgrade of all software included in the Equipment/instrument so that the Equipment/instrument is in a fully operational condition throughout the term of the Agreement. The Contractor shall be responsible for implementing software replacement Items in accordance with 10.0 of the Scope of Work in the event that corrections to such software are required to ensure the Equipment/instrument is in a fully operational condition.

12.0 Acceptance of Maintenance and Repair Services.

- 12.1 Following Contractor's completion of maintenance and repair service set forth in this Agreement, the Department's Contract Administrator shall evaluate the Contractor's performance of the service to ensure that it met the requirements of this Agreement. If the Contract Administrator determines that the Contractor's performance of the service met the requirements, of this Agreement, then the Contract Administrator shall accept the Contractor's performance of that service by sending the Contractor a written, "Maintenance and Repair Service Acceptance Notice" for that service. If the Contract Administrator finds that the Contractor's performance of the service did not meet the requirements of the Agreement, then the Contract Administrator shall reject the Contractor's performance of the service and send the Contractor a "Maintenance and Repair Service Rejection Notice" for that service that specifies the deficiencies in the Contractor's performance of that service. Upon receiving a Contractor Maintenance and Repair Service Rejection Notice from the Contract Administrator, the Contractor shall have ten days to complete its re-performance of the rejected maintenance and repair service so that it meet the requirements of the Agreement. Once the Contractor has completed such re-performance of the rejected maintenance and repair service, the Department's Contract Administrator shall re-evaluate and accept or reject the re-performed service in accordance with the procedure set forth in this Section.

13.0 ADDITIONS & DELETIONS:

- 13.1 The City, by written notice from the City Purchasing Agent to the Contractor, at anytime during the term of this contract, may add or delete like services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added will be subject to the contract services and charges or rates as an item already specified in the contract fee schedule. In the event the additional service is not identical to any item already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, locations and/or services classified in the contract fee schedule.

14.0 ESTIMATED QUANTITIES NOT GUARANTEED:

- 14.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of repair and preventive maintenance services on Varian analytical instruments and systems during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing requiring all the quantities specified herein.

15.0 WARRANTY OF SERVICES:

- 15.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the contract.
- 15.2 "Correction" as used in this clause, means the elimination of a defect.
- 15.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- 15.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.
- 15.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

EXHIBIT "BB"
EQUIPMENT LOCATION LIST

The equipment listed below are part of this contract agreement and are owned and operated by the Department of Public Works & Engineering's Wastewater Operation Division.

Item No	Description	Location
1	GC.MS System, Varian Model MSSY211100 Total Care 2200/2100, SN 2000-43849718 plus Combipal 123443	Southeast Water Purification Plant 3100 Genoa Red Bluff Houston, TX 77736
2.	Spectrophotometer, Varian Model AA1101110A, Total Care AA 220/240 FS, Harmonize Code #9033000000, SN 220FS-EL 03037491	East Water Purification Plant 2300 Federal Road Houston, TX 77015
3.	Auto Sampler, Varian Model AASIP01120, Repair Care SIPS20, Harmonize Code #9033000000, SN SIPS20-EL03038026, Plus SPS5 EL03038027	East Water Purification Plant 2300 Federal Road Houston, TX 77015
4.	GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2200-39628634	Southeast. Water Purification Plant 3100 Genoa Red Bluff Houston, 77736
5.	Auto Sampler, Varian Model 8400C11100, Total Care 8400/8410, Harmonize Code 8542310000, SN 8400-1183	Southeast Water Purification Plant 3100 Genoa Red Bluff Houston, 77736

The equipment listed below are part of this contract agreement and are operated by the Department of Health and Human Services.

Item No	Description	Location
1.	Varian Gas Chromatograph, SN GCMS2100T-51700329	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
2.	Varian Gas Chromatograph SN 8400-889	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
3.	Varian Gas chromatograph SN GCMS2100-51860336	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
4.	Varian Gas Chromatograph SNLSC310001257006	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030

EXHIBIT "BB"

EQUIPMENT LOCATION LIST

The equipment listed below are part of this contract agreement and are operated by the Department of Health and Human Services

Item No	Description	Location
5.	Varian Inductively Coupled Plasma-Optical Emission Spectrometry (ICP-Model 720 ES ICP-OES/ SN EL06084253 SPS-E106093497	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
6.	Gas Chromatograph, SN 3800-13252	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
7.	Auto Sampler, SN 8400-05718	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030
8.	Auto Sampler for GCMS SN Archon-15336	The Bureau of Laboratory Services 1115 S. Braeswood Houston, Texas 77030

END OF SECTION

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EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
DRUG POLICY COMPLIANCE AGREEMENT

I, Cynthia Johnston, ASST SECRETARY as an owner or officer of
(Name) (Print/Type)
Varian Inc. (Title)
(Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

2-09-10
Date

Contractor Name

Signature

Title

Varian Inc.
[Signature]
ASST. SECRETARY

EXHIBIT "E"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Cynthia Johnston ASST Secretary
(Name - Print/Type) (Title)

as an owner or officer of Varian Inc. (Contractor)
have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

2-09-10
Date

Varian Inc.
Contractor Name

[Signature]
Signature

ASST Secretary
Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, _____
(Name - Print/Type)

as an owner or officer of _____ (Contractor)
have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

Date

Contractor Name

Signature

Title

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, Cynthia Johnston Asst Secretary as an owner or officer of
 (Name) (Print/Type) (Title)
Varian Inc. (Contractor)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding six months from ongoing to _____ 20 _____

- CJ Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the
 the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).
- CJ Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and
 Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.
- CJ Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.
- CJ Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston
 contract. The number of total employees on safety impact positions during this reporting period is _____

CJ Initial From _____ to _____ the following testing has occurred:
 (start date) (end date)

	<u>Reasonable</u>	<u>Post</u>	
	<u>Random</u>	<u>Suspicion</u>	<u>Accident</u>
	<u>Total</u>		
Number of Employees Tested	<u>& See attached</u>		
Number of Employees Positive			
Percent Employees Positive			

____ Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy
 Initials and Executive Order No. 1-31.

____ I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines
 Initials will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my
 personal knowledge and are true and correct.

2-09-10
 Date

Contractor Name Varian Inc.
 Signature [Signature]
 Title Asst Secretary

EXHIBIT "G"
FEES AND COSTS

Group I - Year 1 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Drinking Water Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2000-43849718 plus Combipal 123443	MON	\$778.58
2		Spectrophotometer, Varian Model AA1101110A, Total Care AA 220/240 FS, Harmonize Code 9033000000, SN 220FS-EL03037491	MON	\$220.33
3		Auto Sampler, Varian Model AASIP01120, Repair Care SIPS20, Harmonize Code 9033000000, SN SIPS20-EL03038026, Plus SPS5--EL03038027	MON	\$122.75
4		Auto Sampler, Varian Model 8400C11100, Total care 8400/8410 Harmonize Code 8542310000, SN 8400-1183	MON	N/C
5		GC/MS System, Varian Model MSSY211100, Total care 2200/2100/, SN 2200-39628634	MON	\$598.08

Group II - Year 1 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Wastewater Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Varian ICP-MS System, SN EL04043762	MON	\$1238.58
2		Varian Water Chiller & Vacuum Pumps, (used with ICP-MS, SN EL04043762	MON	N/C
3		Auto Sampler, Varian Model SPS3, SN EL04053438 (used w/ICP-MS SN EL04043762	MON	N/C

Group III - Year 1 Preventive Maintenance and Repair-Additional Materials - Cost Plus % for the Wastewater, Drinking Water Operations and the Bureau of Laboratory Services

Item #	Description	% /Markup
1	Additional Materials as needed at Actual cost Plus Mark-Up Percentage (%)	5.00

Group IV - Year 1 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Health and Human Services Department

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Chromatograph, Gas VarianSN GCMS2100T-51700329	MON	\$598.08
2		Chromatograph, Gas Varian SN 8400-889 Included with Coverage of Item #1	MON	N/C
3		Chromatograph, Gas Varian SN GCMS2100-51860336	MON	\$598.08
4		Chromatograph, Gas varian SN LSC31000125006	MON	\$192.08
5		ICP, Varian Model 720-ES ICP-OES/SN EL 06084253, SPS-EI06093497	MON	\$801.92
6		Chromatograph, Gas SN 3800-13252 Apart of of Item No. 5	MON	\$174.17
7		Sampler, auto SN 8400-05718 a Part of Item No. 5	MON	\$115.83
8		Sampler, Auto Archon 11100; Auto Sampler for GCMS Sericl No,Archon-15336	MON	\$163.50

Group I - Year 2 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Drinking Water Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2000-43849718 plus Combipal 123443	MON	\$778.58
2		Spectrophotometer, Varian Model AA1101110A, Total Care AA 220/240 FS, Harmonize Code 9033000000, SN 220FS-EL03037491	MON	\$220.33
3		Auto Sampler, Varian Moder AASIP01120, Repair Care SIPS20, Harmonize Code 9033000000, SN SIPS20-EL03038026, Plus SPS5--EL03038027	MON	\$122.75
4		Auto Sampler, Varian Model 8400C11100, Total care 8400/8410 Harmonize Code 8542310000, SN 8400-1183	MON	N/C
5		GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2200-39628634	MON	\$598.08

Group II - Year 2 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Wastewater Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Varian ICP-MS System, SN EL04043762	MON	\$1238.58
2		Varian Water Chiller & Vacuum Pumps, (used with ICP-MS, SN EL04043762)	MON	N/C
3		Auto Sampler, Varian Model SPS3, SN EL04053438 (used w/ICP-MS SN EL04043762)	MON	N/C

Group III - Year 2 Preventive Maintenance and Repair-Additional Materials - Cost Plus % for the Wastewater, Drinking Water Operations and the Bureau of Laboratory Services

Item #	Description	%/Markup
1	Additional Materials as needed at Actual cost Plus Mark-Up Percentage (%)	5.00

Group IV - Year 2 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Health and Human Services Department

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Chromatograph, Gas Varian SN GCMS2100T-51700329	MON	\$598.08
2		Chromatograph, Gas Varian SN 8400-889 Included with Coverage of Item #1	MON	N/C
3		Chromatograph, Gas Varian SN GCMS2100-51860336	MON	\$598.08
4		Chromatograph, Gas varian SN LSC310001257006	MON	\$192.08
5		ICP, Varian Model 720-ES ICP-OES/SN EL 06084253, SPS-EI06093497	MON	\$801.92
6		Chromatograph, Gas SN 3800-13252 Apart of of Item No. 5	MON	\$174.17
7		Sampler, auto SN 8400-05718 a Part of Item No. 5	MON	\$115.83
8		Sampler, Auto Archon 11100; Auto Sampler for GCMS Seriel No,Archon-15336	MON	\$163.50

Group I - Year 3 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Drinking Water Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2000-43849718 plus Combipal 123443	MON	\$778.58
2		Spectrophotometer, Varian Model AA1101110A, Total Care AA 220/240 FS, Harmonize Code 9033000000, SN 220FS-EL03037491	MON	\$220.33
3		Auto Sampler, Varian Model AASIP01120, Repair Care SIPS20, Harmonize Code 9033000000, SN SIPS20-EL03038026, Plus SPS5--EL03038027	MON	\$122.75
4		Auto Sampler, Varian Model 8400C11100, Total care 8400/8410 Harmonize Code 8542310000, SN 8400-1183	MON	N/C
5		GC/MS System, Varian Model MSSY211100, Total Care 2200/2100, SN 2200-39628634	MON	\$598.08

Group II - Year 3 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Wastewater Operations Division

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Varian ICP-MS System, SN EL04043762	MON	\$1238.58
2		Varian Water Chiller & Vacuum Pumps, (used with ICP-MS, SN EL04043762)	MON	N/C
3		Auto Sampler, Varian Model SPS3, SN EL04053438 (used w/ICP-MS SN EL04043762)	MON	N/C

Group III - Year 3 Preventive Maintenance and Repair-Additional Materials - Cost Plus % for the Wastewater, Drinking Water Operations and the Bureau of Laboratory Services

Item #	Description	% Markup
1	Additional Materials as needed at Actual cost Plus Mark-Up Percentage (%)	5.00

Group IV - Year 3 Preventive Maintenance and Repair Services on Varian Analytical Instruments for the Health and Human Services Department

Item #	Material Description	Description	Unit of Measure	Unit Price
1		Chromatograph, Gas VarianSN GCMS2100T-51700329	MON	\$598.08
2		Chromatograph, Gas Varian SN 8400-889 Included with Coverage of Item #1	MON	N/C
3		Chromatograph, Gas Varian SN GCMS2100-51860336	MON	\$598.08
4		Chromatograph, Gas varian SN LSC310001257006	MON	\$192.08
5		ICP, Varian Model 720-ES ICP-OES/SN EL 06084253, SPS-EI06093497	MON	\$801.92
6		Chromatograph, Gas SN 3800-13252 Apart of of Item No. 5	MON	\$174.17
7		Sampler, auto SN 8400-05718 a Part of Item No. 5	MON	\$115.83
8		Sampler, Auto Archon 11100; Auto Sampler for GCMS Sericl No,Archon-15336	MON	\$163.50

**EXHIBIT H
PAY OR PLAY**

Document 00460
(Form POP-1A)



City of Houston

**Pay or Play Program
Acknowledgement Form**

What this form does. This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

For more information, contact the Contract Administrator.

Routing. Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

Debbie Lucchesi
Signature

12-16-09
Date

Debbie Lucchesi
Print Name

109126
City Vendor ID

Varian Inc.
Company Name

925-945-2271
Phone Number

Debbie.Lucchesi@varianinc.com
Email Address

EXHIBIT H PAY OR PLAY

FORM POP 2 (DOCUMENT 00630)



CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Varian Inc. \$ Total Bid # 228,033.78
(Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 2700 Mitchell Dr. Walnut Creek, CA 94598

Project No.: [GFS/CIP/AIP/File No.]

Project Name: [Legal Project Name] * Varian Inc offers health care

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

- ☐ Yes ☒ No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City. *see attached*
- ☒ Yes ☐ No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:
(1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost. *Varian employees have health care coverage*
- ☒ Yes ☐ No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable. *none Varian employees only*
- ☐ Yes ☒ No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed. *Varian employees only NO*
- ☒ Yes ☐ No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions. *SUB-contractors*
- ☒ Yes ☐ No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Following Information is Mandatory	Prime Contractor	Sub-Contractor
Total No. Of Employees on City Job		
No. Of Employees "Playing"		
No. Of Employees "Paying"		
No. Of Employees "Exempt"		

I hereby certify that the above information is true and correct.

CONTRACTOR (Signature)

DATE

NAME AND TITLE (Print or type)

Form POP 2

Revised 10/22/2008